

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

IDERLINA PERALTA PAGANURAN, et
al.,

Defendants.

Case No. 2:06-CR-0403-KJD-LRL

ORDER

Currently before the Court is Defendant Schejerezade A. Asprah's ("Asprah") Motion to Dismiss for Failure to Provide a Speedy Trial (#103), filed January 11, 2008, in which she contends that the Court should dismiss the Government's case against her if the Government requests another delay in these proceedings. The Government filed a Response (#116), on February 1, 2008, and Asprah filed a Reply (#124), on February 11, 2008.

I. Background

Defendant, Asprah is under indictment on one count of Conspiracy to Commit Money Laundering, a violation of 18 U.S.C. § 1956(h), and one count of Money Laundering, a violation of 18 U.S.C. § 1956(a)(3)(A)-(C), and § 2. The charges in this case stem from a sting operation involving Asprah and codefendants Iderlina Pagunuran ("Pagunuran"), Celestina Aguilar ("Aguilar"), and Emmanuel Aguilar ("Aguilar"), in which the Defendants are alleged to have conspired with one another to launder money they believed to be the proceeds of illegal narcotics transactions. Asprah's involvement in the alleged criminal scheme began when, in 2005, Koning, a Dutch citizen who had been working with the Drug Enforcement Administration ("DEA") intermittently for several years as an informant and who, at the time of the conspiracy, had been representing himself to others to be a drug dealer, complained to Asprah and her husband about

1 purported money laundering difficulties he was experiencing. Asprah, who had been friends with
2 Koning for some time prior to this conversation and who was aware that Koning was a “drug dealer,”
3 volunteered to Koning that she knew someone who might be able to launder money for Koning.
4 Shortly thereafter, Asprah set up a meeting between Koning and Asprah’s former attorney,
5 Pagunuran, on or about July 25, 2005, in Thailand, where Asprah was residing. Asprah also attended
6 the meeting, during which she introduced Koning to Pagunuran, and the three discussed the money
7 laundering scheme. Pagunuran provided her phone number and e-mail address to Koning for future
8 use regarding the scheme, and Asprah separately provided her e-mail address to Koning for the same
9 purpose.

10 Approximately three months later, Asprah traveled to Manila, Philippines, where a second
11 meeting had been arranged between the parties. The meeting was attended by Asprah, Pagunuran,
12 Koning, and another DEA informant (“CS-2”) who, like Koning, was asked by the DEA to pose as a
13 drug trafficker. By the end of the meeting, Asprah agreed in principle to participate in a money
14 laundering transaction with the informants and further agreed to coordinate at a later time the
15 logistics of the transaction, including the amount of money to be laundered and the fees to be paid to
16 the Defendants. After numerous e-mails were exchanged between Asprah and Pagunuran, and
17 Koning and CS-2, it was finally agreed that Pagunuran would launder \$200,000 in “drug proceeds”
18 in exchange for a 10 percent fee. Asprah also negotiated a 2 percent “finder’s fee” for her efforts in
19 selecting Pagunuran as a suitable money launderer and brokering the deal between Pagunuran and the
20 informants.

21 In 2006, \$200,000 in cash was delivered to Aguilar, Pagunuran’s associate based in the
22 United States. The money was picked up and counted in Las Vegas and was to be laundered to an
23 account in Denmark. Of that amount, approximately \$86,000 was successfully laundered to an
24 undercover bank account. A commission of 10 percent of the total amount, or \$20,000, was also
25 pocketed by Pagunuran. The government believes that the remaining money was stolen by Aguilar,
26 who remains a fugitive and is believed to be hiding in the Philippines.

1 In December 2006, Asprah and Pagunuran were charged in a two-count Indictment (#1) with
2 conspiracy to commit money laundering and money laundering. On March 14, 2007, they, along
3 with the two codefendants, were charged by a grand jury in a superseding indictment (#10). Shortly
4 thereafter, in early 2007, Asprah was arrested by authorities in Hong Kong and subsequently
5 extradited to the United States. On June 25, 2007, Asprah appeared in the District of Nevada but
6 requested that her initial appearance be continued to the following day, June 26, 2007. (Opp'n
7 (#116) at 2.) On June 26, 2007, Asprah's initial appearance in the District of Nevada was held
8 before Judge Peggy A. Leen. (*Id.*) The matter was then continued until July 30, 2007 to join
9 codefendant Celestina Aguilar, who was arrested in Las Vegas several months before Asprah was
10 extradited to the United States from Hong Kong. (*Id.*) The period of time from the initial
11 appearance held on June 26, 2007, to July 30, 2007, amounts to thirty-three (33) days.

12 On July 20, 2007, the parties filed a Joint Stipulation (#63) seeking a continuance until
13 September 10, 2007. On July 23, 2007, the Court approved the Stipulation, and entered an Order
14 (#64) issuing a continuance. In the Order, the Court concluded that the continuance sought was
15 excludable under the Speedy Trial Act, 18 U.S.C. §§ 3161(h)(1)(A), 3161(h)(7) and 3161(h)(8)(A),
16 when considering the factors under 18 U.S.C. §§ 3161(h)(8)(B). (Order (#64) at 5.) The matter was
17 continued to September 10, 2007. (*Id.*)

18 On August 13, 2007, the Government filed a Motion to Continue the Trial Date (#73) and a
19 Motion to Exclude Time Under the Speedy Trial Act (#74). Both motions set forth several
20 arguments justifying continuance and exclusion of time under the Speedy Trial Act. In particular, the
21 Government argued that the case is sufficiently complex in nature to merit the continuance and
22 exclusion. The Government also argued that continuance and exclusion of time under the Speedy
23 Trial Act were necessary due to its official request for foreign evidence made to the Department of
24 Justice of International Affairs; specifically, records from foreign bank accounts located in the
25 Philippines and Denmark. (Mot. (#73) at 2; Mot. (#74) 3, 4, 6, 7.) Finally, the Government argued
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1 for continuance and exclusion because it was still attempting to locate the third codefendant,
2 Emmanuel Aguillar.

3 The Court held a hearing to address the motions on August 28, 2007. Following the
4 arguments of counsel for the Government and counsel for codefendants Asprah, Aguilar and
5 Pagunuran, the Court granted both motions and made findings on the record that the time was
6 excludable under the Speedy Trial Act. (Minutes of Proceedings (#82).) Accordingly, the
7 September 10, 2007, trial date was continued until November 26, 2007. (Id.) A status conference
8 was set for October 30, 2007, for the government to advise the Court on its progress in obtaining the
9 relevant foreign evidence. (Id.; see also Opp'n (#116) at 2.)

10 On October 30, 2007, the Government advised the Court that the records requested by the
11 letters rogatory had not yet been received and requested another continuance. (Minutes of
12 Proceedings (#90).) The Court granted the Government's request and made further findings on the
13 record that the time was excludable under the Speedy Trial Act. (Id.) The trial date was continued
14 until February 25, 2008, and a status hearing was set for January 22, 2008, for the government to
15 advise the Court on its progress in obtaining foreign evidence from the Philippines and Denmark.
16 (Id.; see also Opp'n (#116) at 2.)

17 On January 11, 2008, Asprah filed the instant Motion to Dismiss (#103). At the January 22,
18 2008, status conference, the Government provided the Court with an update regarding its efforts to
19 obtain foreign evidence. (Am. Minutes of Proceedings (#112).) Because the foreign evidence sought
20 by the Government had not yet been obtained, the Government requested a continuance until May
21 2008. (Id.) The Court granted the continuance and excluded the time from February 26, 2008, to
22 May 19, 2008, pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(9). (Id.; see also Order
23 (#114).) The matter is currently set for jury trial on May 19, 2008. (Order (#114).)

24 **II. Discussion**

25 Upon review of Defendant Asprah's Motion to Dismiss (#103), the Court finds that
26 Defendant not only seeks to have the action dismissed should further continuance be requested, but

1 also includes language challenging the Court's previous rulings for continuance and exclusion of
2 time under the Speedy Trial Act. Specifically, Defendant argues that the Government's earlier
3 requests for continuance and to exclude time were based on incorrect facts and law, were legally
4 deficient, and that "Judge Dawson did not evaluate all of the factors required to support an exclusion
5 of time pursuant to the Speedy Trial rights of the Public and the Defendant." (Def.'s Reply at 1, 3.)
6 Defendant argues that the Court was misled by the Government in failing to properly cite 18 USC §
7 3292, which requires that the request for foreign evidence must be filed before indictment.
8 Defendant argues that the request for foreign evidence in this case was not made until seven months
9 after indictment, and thus that the Government's attempt to continue the trial date further is "dilatory
10 and abusive". (*Id.* at 2.)

11 **A. Speedy Trial Act**

12 Upon review, the Court finds that its earlier decision to grant the Government's Motion for
13 Continuance, and to Exclude time was proper under 18 USC § 3161. 18 USC § 3161(h) sets forth
14 several reasons for which a period of delay may be excluded when computing the time within which
15 an indictment must be filed, or in computing the time within which the trial of any offense must
16 commence. Listed among the reasons are: "when the defendant is joined for trial with a codefendant
17 as to whom the time for trial has not run and no motion for severance has been granted." 18 U.S.C. §
18 3161 (h)(B)(7). The statute also provides that "any period of delay resulting from a continuance
19 granted by any judge" may be excluded if the judge can articulate on the record, either orally, or in
20 writing, that the continuance was granted on the basis of his findings that "the ends of justice served
21 by [granting a continuance] outweigh the best interest of the public and the defendant in a speedy
22 trial." 18 U.S.C. § 3161 (h)(8)(A). According to the statute, some factors to be taken into
23 consideration when making this determination are:

- 24 (i) Whether the failure to grant such a continuance in the proceeding would be likely
25 to make a continuation of such proceeding impossible, or result in a miscarriage of
26 justice.

1 (ii) Whether the case is so unusual or so complex, due to the number of defendants,
2 the nature of the prosecution, or the existence of novel questions of fact or law, that it
3 is unreasonable to expect adequate preparation for pretrial proceedings or for the trial
4 itself within the time limits established by this section.

5 (iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the
6 indictment is caused because the arrest occurs at a time such that it is unreasonable to
7 expect return and filing of the indictment within the period specified in section
8 3161(b), or because the facts upon which the grand jury must base its determination
9 are unusual or complex.

10 (iv) Whether the failure to grant such a continuance in a case which, taken as a whole,
11 is not so unusual or so complex as to fall within clause (ii), would deny the defendant
12 reasonable time to obtain counsel, would unreasonably deny the defendant or the
13 Government continuity of counsel, or would deny counsel for the defendant or the
14 attorney for the Government the reasonable time necessary for effective preparation,
15 taking into account the exercise of due diligence.

16 18 U.S.C. 3161 (h)(8)(B).

17 A review of the transcript of the August 28, 2007, hearing demonstrates that the Court
18 carefully considered several factors, including those listed under 18 U.S.C. § 3161(h)(8)(B) in
19 making its determination that the ends of justice were best served by granting the Government's
20 continuance.

21 The arguments put forward in Defendant Asparah's immediate Motion to Dismiss and Reply
22 mirror the arguments contained in codefendant Paganuran's Opposition to the Government's Motion
23 to Continue (#81) filed on August 27, 2008. Contrary to Defendant's current contention that "the
24 Court's prior order excluding time is not supported by legal authority . . . [because] no required
25 balancing was conducted, the record demonstrates that the Court indeed did take Defendant Asprah
26 and Pagunuran's arguments under advisement, did consider the factors set forth in 18 U.S.C. § 3161
(h)(8)(B), and only after doing so made its determination that the ends of justice were best served by
granting the Government's continuance, and excluding the delay caused by said continuance under
the Speedy Trial Act. (See Def.'s Mot. to Dismiss at 5.)

1 At the hearing on August 28, 2007, the Government explained that its delay in filing the
2 Mutual Legal Assistance Treaty (MLAT) request for foreign bank records was purposeful—in
3 attempt to avoid the dissemination of confidential information and to safeguard its ongoing
4 investigation.¹ The Government also indicated that they delayed in filing the MLAT request because
5 the Defendants had represented that they wanted to cooperate with the investigation—according to
6 the Government however, said cooperation did not occur.

7 Upon reviewing the parties' Motions and Responses, and upon hearing the parties'
8 arguments, at the August 28, 2007, hearing, the Court found that a continuance was appropriate and
9 that the time was excludable under 18 USC § 3161 because the case is sufficiently complex, as had
10 been previously determined by the Magistrate Judge. The Court further found that a continuance was
11 warranted and that the delay was excludable because "there is foreign evidence that must be obtained
12 pursuant to the MLAT treaty," and that the Government "did not act in a dilatory fashion in seeking
13 [the foreign] evidence through the procedures . . . available." (See Transcript of Hearing at 27.) The
14 Court further found that because Defendant Paganuran was represented to have contacts with
15 officials at high levels in the Philippines, the Government's request of the evidence at an earlier time
16 could have imperiled the investigation. (Id.) Furthermore, the Court found that the absence of
17 Emmanuel Augilar warranted a continuance, because his absence "would require [the] Court to retry
18 the case at such a time as he is arrested if it went forward on September 10th." (Id.)

19 Furthermore, though not a factor in making its determination here, the Court notes that
20 Defendant Asprah has failed to raise the immediate arguments at previous hearings, and that in her

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22 ¹Specifically, the Government noted that it purposefully delayed in filing its motion for exclusion until after the
23 MLAT request had been sent because the MLAT request represented the Government's official demand for foreign
24 evidence. Furthermore, the Government explained that the MLAT request was not sent prior to Defendants' arrest
25 because the DEA had been advised by the Government's counterparts in the Philippines not to request the foreign bank
26 account information because of corruption in the Philippines, and because Defendants admittedly had "high-placed
banking contacts" who, if made aware of the investigation could have "tipped off" Defendants. (See Transcript of
Hearing at 8.) Additionally, Defendant Paganuran allegedly had represented to the Government's confidential informants
that she had previously laundered money for a U.S. designated terrorist organization. Due to the nature of this
information, the Government felt it necessary to safeguard the investigation because of its potential terrorist ties, and
therefore, could not send an MLAT prior to Defendants' arrest. (Id. at 9)

1 immediate Motion to Dismiss, Defendant acknowledges that “the Court has found good cause” for
2 the Government’s previous requests for continuances. (See Def.’s Mot. to Dismiss at 4.) Here,
3 though the Court is sympathetic to Defendant Asprah’s concern regarding her ongoing detention,
4 because of the nature of the case, and for the reasons listed above, the Court maintains its finding that
5 the ends of justice have been best served in granting the Government’s motions for continuance an
6 exclusion of time under the Speedy Trial Act. The Court however maintains its responsibility under
7 18 U.S.C. § 3161 to consider and weigh carefully the Defendant’s interests in a speedy trial, and
8 therefore will continue to conscientiously do so should future Motions for continuance be filed.

9 **III. Conclusion**

10 **IT IS HEREBY ORDERED** that Defendant’s Motion to Dismiss for Failure to Provide a
11 Speedy Trial (#103) is **DENIED**.

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13 DATED this 14th day of April 2008.

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17 Kent J. Dawson
18 United States District Judge
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